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9 Attorneys for Plaintiff  
10 Enigma Software Group USA, LLC

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE DISTRICT OF ARIZONA

13  
14 Enigma Software Group USA, LLC,  
15 Plaintiff,  
16  
17 v.  
18 Sean G. Doyle,  
19 Defendant.

No.  
**COMPLAINT**

20  
21 Plaintiff Enigma Software Group USA, LLC, by its attorneys, for its Complaint  
22 against Defendant Sean G. Doyle, respectfully alleges as follows:

23 **INTRODUCTION**

24 1. This is an action for civil remedies, including injunctive relief and  
25 damages, under the federal Lanham Act and under Arizona state common law, arising out  
26 of Defendant Sean G. Doyle's malicious publication of false statements regarding Plaintiff  
27 Enigma Software Group USA, LLC and its SpyHunter software product.  
28

## **PARTIES**

2. Plaintiff Enigma Software Group USA, LLC (“ESG”) is a Connecticut limited liability company. None of ESG’s members is a resident or citizen of the State of Arizona.

3. Defendant Sean G. Doyle (“Doyle”) is an individual who, upon information and belief, is a resident and citizen of the State of Arizona, with a residential address at 8311 East Via de Ventura, #1101, Scottsdale, Arizona 85258.

## **JURISDICTION AND VENUE**

4. This action arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and the laws of the State of Arizona. This Court has subject matter jurisdiction, *inter alia*, pursuant to 28 U.S.C. § 1331, 1332, 1338, and 1367.

5. Venue is proper in this District, *inter alia*, pursuant to 28 U.S.C. § 1391(b).

## **FACTS**

### **Background**

6. ESG develops and markets computer security products. ESG’s flagship product is software program called SpyHunter, which presently is in version 4. SpyHunter is an adaptive spyware detection and removal tool that provides rigorous protection against the latest spyware threats including malware, Trojans, rootkits, and malicious software.

7. ESG provides a free scanning version of SpyHunter to consumers who wish to test their computers for malware and other threats. If the scanner detects malware or other threats, the consumer is given the option to purchase a full version of SpyHunter that has tools to remove the malware and other threats.

8. ESG sells licenses to SpyHunter solely over the Internet. ESG enjoys worldwide sales of SpyHunter, including sales to citizens of the State of Arizona.

9. ESG’s SpyHunter product has received top industry certifications.

10. SpyHunter has received the Checkmark Certification from West Coast Labs. Checkmark Certification is a highly regarded accreditation program, recognized globally by vendors, end users, and government agencies as providing effective confirmation of a product's effectiveness in an ever-changing threat landscape. Checkmark Certification validates the functionality and performance of both content and network security technologies in a range of threat scenarios and attack vectors from standard baseline benchmarking tests against accepted industry standards.

11. ESG is a Better Business Bureau accredited business. Better Business Bureau accreditation standards include a "commitment to make a good faith effort to resolve any consumer complaints." ESG has received an "A+" rating from the Better Business Bureau.

**Doyle Has Made False and Libelous Statements  
About ESG and Its SpyHunter Product**

12. Doyle owns and operates a website at <http://www.botcrawl.com> (the "Botcrawl website").

13. Doyle holds himself out as an expert in computer security matters.

14. Upon information and belief, Doyle is not a computer security expert but is, in fact, an unemployed individual in his late twenties living with his parents.

15. On or about September 17, 2013, Doyle published an article on the Botcrawl website titled "How to remove SpyHunter malware -- Enigmasoft rogue software removal." See <http://botcrawl.com/how-to-remove-spyhunter>.

16. This article purports to convey factual information about ESG and its products, but it instead asserts outright falsehoods. The article makes the following assertions falsely and without any evidence:

- That SpyHunter 4 is "virus";
- That SpyHunter 4 is "rogue software";
- That SpyHunter 4 is "malware";
- That SpyHunter 4 is "scareware";
- That SpyHunter 4 or ESG "uses unethical marketing techniques";

- That SpyHunter 4 or ESG “causes many problems for computer users relating to the invasion of privacy, the installment [sic] of third-party malware, the depletion of computer functionality, and more”;
- That SpyHunter 4 is an “unwanted program that has caused many issues for users”;
- That SpyHunter 4 performs “fake system scans” and displays “fake scan results” and that you have “noticed unethical practices used to fabricate malicious scan results.”
- That “Spyhunter may also install third-party malware” and “Enigmasoft may essentially try to frighten victims into believing their computers are infected with malware if they were not infected prior to installing Spy Hunter, if users only had a small amount of malware (etc.)” [sic];
- That “The tactic to infect a computer system with malware which is then reported in a scan result is potentially used as a selling point for some users. This may be referred to as a scam.”
- That “SpyHunter is not technically a computer virus but may entrap users to terms they would not normally agree with if presented in a proper manner.”

17. Doyle’s article does not purport to reflect his personal or editorial opinion. Rather, in the article, Doyle states, “This article is not based off personal opinion. The information in this article is taken from many third-party sources; some sources can be found in the list below, you can find other sources and information about Spyhunter by simply searching Google.”

18. Furthermore, Doyle’s article also includes statements such as “reports suggest” and “some users have reported,” which have the effect of adding greater undeserved credibility to Doyle’s false statements.

19. Doyle’s site hosts additional false and defamatory articles and third-party comments solicited by his false and defamatory articles.

### Doyle Promotes Competing Products By Means of the False Articles on Botcrawl.com

20. Doyle states on the Botcrawl.com website that the site is a “free source of protection against the most severe forms of malware and future cyber threats.” However, the Botcrawl website commercially promotes several products by means of

1 advertisements and affiliate links, through which Doyle earns a percentage of the profits  
2 from the sale of third-party products through his website.

3 21. Specifically, Doyle uses the Botcrawl website -- and the false statements  
4 about ESG and its products -- to promote software products that compete with ESG and  
5 SpyHunter, including the products Malwarebytes and CCleaner.

6 22. ESG, through counsel, has sent a written demand to Doyle to cease and  
7 desist his unlawful conduct, but Doyle has refused to do so.

8 23. Doyle's conduct is willful and malicious.

9 24. Upon information and belief, Doyle's unlawful conduct is causing and will  
10 continue to cause harm to ESG and its products.

11 25. ESG has no adequate remedy at law.

### 12 **FIRST CAUSE OF ACTION**

13 (Violations of Lanham Act § 43(a))

14 26. ESG repeats and incorporates by reference the foregoing paragraphs.

15 27. Doyle's publication of false and misleading statements about ESG and  
16 SpyHunter constitutes false advertising in violation of 15 U.S.C. § 1125(a)(1)(B)).

17 28. Doyle's publication of false statements about ESG and SpyHunter is likely  
18 to deceive consumers as to the nature and quality of ESG and SpyHunter, including  
19 causing consumers to believe that SpyHunter itself is a form of malware.

20 29. As a direct and proximate result of Doyle's unlawful acts, ESG has suffered  
21 and will continue to suffer significant reputational and monetary injury in amounts that  
22 will be proven at trial but that are believed to exceed \$100,000.

### 23 **SECOND CAUSE OF ACTION**

24 (Trade Libel/Commercial Disparagement)

25 30. ESG repeats and incorporates by reference the foregoing paragraphs.

26 31. Doyle has maliciously published false statements that disparage ESG and its  
27 SpyHunter product.  
28

32. These statements constitute injurious falsehoods and trade libel, which inter alia impugn the integrity of ESG and the quality of SpyHunter. These statements were expressly directed at ESG.

33. Doyle has published his false statements to the public by means of the Internet and specifically the Botcrawl website.

34. There can be no question that the readers of Doyle's articles understand Doyle's defamatory meaning and understand that Doyle's statements are directed at ESG and its products.

35. ESG has been specifically harmed by Doyle's defamatory statements.

36. Doyle has no privilege to make his false and harmful statements.

37. As a direct and proximate result of Doyle's unlawful acts, ESG has suffered and will continue to suffer significant reputational and monetary injury in amounts that will be proven at trial but that are believed to exceed \$100,000.

### **THIRD CAUSE OF ACTION**

(Defamation)

38. ESG repeats and incorporates by reference the foregoing paragraphs.

39. Doyle's published statements concerning ESG and SpyHunter are false and bring ESG into disrepute or contempt and impeach its integrity and reputation. Specifically, Doyle alleges inter alia that ESG "uses unethical marketing techniques"; that ESG attempts to "frighten victims into believing their computers are infected with malware"; and that "The tactic to infect a computer system with malware which is then reported in a scan result is potentially used as a selling point for some users. This may be referred to as a scam."

40. Doyle has published his false statements to the public by means of the Internet and specifically the Botcrawl website.

41. Doyle is at fault because he maliciously made such statements.

42. ESG has been and continues to be damaged by these statements.

43. ESG is a for-profit corporation, and Doyle's statements prejudice ESG in the conduct of its business and/or to deter others from dealing with it.

44. As a direct and proximate result of Doyle's unlawful acts, ESG has suffered and will continue to suffer significant reputational and monetary injury in amounts that will be proven at trial but that are believed to exceed \$100,000.

### **REQUESTS FOR RELIEF**

WHEREFORE Plaintiff Enigma Software Group, LLC seeks judgment in its favor and against Doyle as follows:

- a. Declaring that Doyle's conduct violates 15 U.S.C. § 1125(a)
- b. Declaring that Doyle's conduct constitutes trade libel and/or commercial disparagement under the laws of the State of Arizona;
- c. Declaring that Doyle's conduct constitutes defamation of a corporation under the laws of the State of Arizona;
- d. Permanently enjoining Doyle from publishing false advertising statements in relation to ESG;
- e. Permanently enjoining Doyle from publishing statements constituting trade libel and/or commercial disparagement in relation to ESG;
- f. Permanently enjoining Doyle from publishing statements constituting defamation of a corporation in relation to ESG;
- g. Awarding ESG damages in an amount proven at trial and believed to be in excess of \$100,000, plus interest;
- h. Awarding ESG its attorneys' fees and costs incurred in bringing this action; and,
- i. Awarding such other and further relief as the Court deems proper.

Snell & Wilmer

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1 DATED this 18th day of March, 2014.

2 SNELL & WILMER L.L.P.

3  
4 By: s/ Joseph G. Adams

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